IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1966 OF 2007

Shri Kamalakar Dhondiram Bhosale .. Petitioner.

V/s.

1. State of Maharashtra & Ors. .. Respondents.

Mr.M.S.Karnik for the Petitioner.

Mr.C.R.Sonawane, AGP for the Respondents Nos. 1 & 2.

Mr.V.P.Malwankar for the Respondent No.3.

CORAM : F.I. REBELLO AND
R.M. SAVANT, JJ.

DATED : 16th JUNE, 2007.

P.C. :- (Per R.M.Savant,J)

. Rule. Rule with the consent of the parties made returnable forthwith and heard finally.

2. This petition impugns the order dated 17.02.2007 passed by the Caste Scrutiny Committee, invalidating the caste certificate of the petitioner as belonging to the Kunbi-OBC. Such of the facts which are necessary to be cited are stated thus :

3. The petitioner has been issued a certificate

belonging to Kunbi OBC by the competent authority, being Sub-Divisional Officer, Kolhapur. In November, 2006 elections to the respondent No.3 Municipal Council were held. The petitioner contested the said election in a reserved seat. On coming into force of the Act known as Maharashtra Schedule Caste, Schedule Tribes, Denotified Tribes (Vimukta Jati), Nomadic Tribes, Other Backward Class and Special Backward Classes (Regulation of Issuance and Verification of Caste Certificate) Act, 2000, any person belonging to any of the backward class category if desirous to contest, is required to apply to the competent authority for getting a caste validity certificate. Thereafter elections were to be held to the post of the President of respondent No.3 council which post was reserved for OBC. The petitioner was desirous of contesting for the said post of President. The petitioner's caste certificate was therefore, forwarded to the respondent No.2 committee by the Collector, Kolhapur by letter dated 20th April,2006 for verification of the said caste certificate.

4. After following the procedure, namely, the enquiry by the vigilance cell, a hearing was fixed before the respondent No.2 committee on 15.2.2007. The petitioner was informed on 15.2.2007 that the matter was adjourned to 3rd of March ,2007. However, the

petitioner was issued a notice on 15th February, 2007, intimating him to remain present before the respondent No.2 Committee on 17.2.2007. The petitioner was surprised with the said notice as the petitioner was under an impression that the matter was already adjourned to 3rd of March 2007. The petitioner, however, remained present on 17.2.2007 before the committee and requested some time to file additional documents. It is the case of the petitioner that he also made an application for adjournment. However, the said application was not accepted and nor the said application was taken on record and the matter was decided on the said date. The petitioner thereafter, received only the operative part of the order.

5. The petitioner vide letter dated 17.2.2007 received an intimation that his caste certificate has been declared invalid. However, no speaking order was furnished to the petitioner. The petitioner, therefore, has impugned the intimation dated 17.2.2007 in the present petition.

6. In reply to the above petition, an affidavit has been filed by one Eknath Sampatrao Gaikwad, Member Secretary, Caste Scrutiny Committee, the respondent No.2 Committee, to which now a copy of the speaking order

dated 17.2.2007 is annexed. The Committee, it appears on the basis of the entry in the school leaving certificate in respect of the petitioner, wherein his caste is shown as Hindu Maratha and the death certificate of the grandfather of the petitioner, where his caste is shown as Maratha, invalidated the caste certificate of the petitioner.

7. We have heard the learned counsel for the respective parties. It is submitted by the learned counsel for the petitioner that the two documents, which are birth certificates in respect of Smt. Tani Dattu Bhosale and Smt. Chandra Dattu Bhosale who were the sisters of the petitioner's grandfather, in which the caste is mentioned as Kunbi, has not been properly appreciated by the Committee. In the teeth of the said two contra documents, the learned counsel for the petitioner submitted that the affinity test becomes of crucial importance. The said two documents are relating to the period prior to the commencement of the present century. The committee in terms of the law laid down by this court ought to have therefore, decided the matter applying the affinity test. That having not been done, the order of the Committee is unsustainable and the matter requires to be remanded back to the Scrutiny Committee for a decision afresh.

8. On the other hand it is the contention of the learned AGP that on the basis of the petitioner's own school record as well as that of his grand father, the certificates relating to the sister's of the grand father are inconsequential. The entries in the relevant record relating to three generations i.e. the petitioner's grand father, father show petitioner their caste as Maratha and therefore, affinity test was not at all necessary.

9. We have bestowed our anxious consideration to the rival contentions. In view of the contra evidence by way of two death certificates of the petitioners' grand fathers sisters wherein caste is recorded as Kunabi and where the certificates relate back to the period of 1890, in our view it was necessary for the Committee to apply the affinity test so that the issue would have been resolved. Apart from this, since the petitioner, in our view, was not given proper opportunity to adduce additional evidence, which the petitioner claims to have in his possession, relating to the year 1920 which is of crucial importance. We are not satisfied in the manner in which the order came to be passed by the Committee. The impugned order dated 17.2.2007 would therefore, have to be set aside and the

matter would have to be relegated back to the respondent No.2 committee for deciding the caste claim of the petitioner afresh. The respondent No.2 committee would permit the petitioner to adduce additional evidence, if any, and also apply the affinity test in view of the contra documents produced by the petitioner. On such remand, the respondent No.2 committee is directed to decide the petitioner's caste claim expeditiously and within three months from the date.

10. Needless to say that the caste claim of the petitioner would be decided on its own merit, uninfluenced by the instant order. Rule is accordingly made absolute in the aforesaid terms. Parties to bear their respective costs.

(F.I.REBELLO,J.)

(R.M.SAVANT,J.)

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